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December 2, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, N.W., TW-A325
Washington, DC 20554

EX PARTE OR LATE FILED

Re: Ex Parte Presentation: CC Docket No. 96-61

Dear Secretary Salas:

On Tuesday, December 1, 1998, Herbert E. Marks and the undersigned, on behalf of the State of Hawaii, met with Paul Gallant, Legal Advisor to Commissioner Tristani, to discuss the application of the rate integration requirements of Section 254(g) of the Communications Act to Commercial Mobile Radio Services ("CMRS"). During the meeting, the attached document was distributed. In accordance with Section 1.1206 of the Commission's Rules, an original and one copy of this letter are being filed with the Commission's Secretary. Please contact the undersigned with any questions.

Sincerely,

Brian McHugh

Brian J. McHugh

Copy: Paul Gallant

THE STATE OF HAWAII

- **The 1996 Act Codified and Expanded the Commission's Rate Integration Policy**

  - To remedy the historic pattern of rate discrimination against offshore points such as Hawaii, in 1976 the Commission adopted a policy requiring carriers serving remote locations to employ the same rate structure or rate scheme for those locations that they employ for non-remote locations. This policy is known as rate integration.

  - In adopting the Telecommunications Act of 1996, Congress recognized the importance of this policy to the broader national objective of promoting universal service. Accordingly, Congress codified and expanded the Commission's rate integration policy in Section 254(g) of the 1996 Act.

- **Section 254(g) of the Communications Act Applies to CMRS**

  - Section 254(g) states that "a provider of interstate interexchange services shall provide such services to its subscribers at rates no higher than the rates charged to its subscribers in any other State." Based on this plain language, the Commission has repeatedly determined that Congress intended rate integration to apply to *all* providers of interexchange services, including CMRS providers. *See First Report and Order* at ¶¶ 52-54; *Reconsideration Order* at ¶ 18; *Stay Order* at ¶ 19.

  - Congress chose *not* to make an exception to Section 254(g) for CMRS, as it did for so many other provisions of the 1996 Act. It would be inappropriate to abandon the rate integration requirements of Section 254(g) so soon after its enactment.

  - The difference between wireline and wireless long distance calls is not as great as suggested by the CMRS petitioners. First, most long distance CMRS calls are completed using landline facilities, which can readily be classified as interexchange or local in nature. Further, the Commission has recognized that CMRS providers, like their wireline counterparts, have the ability to distinguish between local and interexchange calls. Finally, many CMRS service plans distinguish between local and interexchange with respect to the rates charged to subscribers.

- **Forbearance From Section 254(g) for CMRS Would be Inappropriate**

  - Forbearance under Sections 10 of the Act is only appropriate where forbearance (1) would not jeopardize the reasonableness and *non-discriminatory* nature of carriers' rates and practices and (2) would not undermine consumer protection. Because lifting Section 254(g) for CMRS would, in effect, give wireless providers a license to discriminate, forbearance under Section 10 would not be appropriate.

- The Commission has expressly determined that broad claims about competition – such as those made by the CMRS petitioners – are not sufficient to justify forbearance from Section 254(g). In particular, the Commission has explained: "[w]e are not persuaded that we must forbear from requiring carriers to comply with rate integration, either generally or in *competitive conditions* . . . Our rate integration policy has integrated offshore points into the domestic interstate, interexchange rate structure so that the benefits of growing competition for interstate interexchange telecommunications services . . . are available *throughout our nation.*" *First Report and Order* at ¶ 52.

- **Section 332(c) of the Act Does Not Require Forbearance from Section 254(g).**

  - Section 254(g) was enacted *after* Section 332(c) and, as noted above, Congress chose not to establish an exception to rate integration for CMRS.

  - Section 332(c) was not intended to completely deregulate CMRS rates. To the contrary, Section 332(c) *requires* the Commission to continue to regulate CMRS providers pursuant to Sections 201 (just and reasonable rates, interconnection obligations), 202 (unreasonable rate discrimination prohibited), and 208 (enforcement of violations through the complaint process) of the Communications Act. Section 254(g) shares with Sections 201 and 202 the common goal of ensuring that consumers do not pay unreasonably high or discriminatory rates

  - Like Section 10 of the Act, Section 332(c) only permits the Commission to forbear from Title II regulation if it determines that (1) enforcement is not necessary to ensure just, reasonable, and non-discriminatory rates; (2) enforcement is not necessary to protect consumers; and (3) forbearance would be consistent with in the public interest. Because forbearance from Section 254(g) would permit CMRS providers to adopt discriminatory rate structures, the Commission cannot forbear from this requirement under Section 332(c).

- **The State is Sensitive to the Concerns Raised by the CMRS Industry**

  - The State is not opposed to modifying the definition of the term "affiliate" as it applies to CMRS providers.

  - The State would not be opposed to using Major Trading Areas ("MTAs") as the dividing line between "local" and "interexchange" calls in the CMRS context.